

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 9, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:06KD-038

Kauai

Cancellation of Revocable Permit No. S-2902 to United States of America and Issuance of Direct Lease to United States of America, Department of Transportation, Federal Aviation Administration for Air Traffic Navigational Aid Purposes Together With a 20-Foot Wide Easement for Access and Utility Purposes, Kalaheo, Koloa, Kauai, Tax Map Key: (4) 2-3-07:21.

APPLICANT:

United States of America, Department of Transportation, Federal Aviation Administration, whose mailing address is P.O. Box 50109, Honolulu, HI 96850-5000.

LEGAL REFERENCE:

Section 171-95(a)(2), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kalaheo Homesteads, 2nd Series situated at Kalaheo, Koloa, Kauai, identified by Tax Map Key: (4) 2-3-07:21, as shown on the attached map labeled Exhibit A.

AREA:

6.327 acres, more or less.
.491 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Kauai CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by Revocable Permit S-2902, United States of America, Permittee, for the purposes of constructing, installing, operating, maintaining, and repairing in, under, over and/or upon the Permit Area, an air navigation aid facility and appurtenant installations and to enter upon and construct, surface, repair, maintain and use the area designated as the "20-Foot Roadway" for purposes of ingress and egress to the Permit Area.

CHARACTER OF USE:

Air traffic navigational aid purposes.

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of the use beyond that previously existing."

The subject facility was grandfathered under the laws and regulations established in 1961, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Not applicable. Applicant is a Federal government agency.

REMARKS:

Applicant currently holds Revocable Permit No. S-2902, issued on March 1, 1961. The FAA constructed the VORTAC building and appurtenant structures at a cost of \$181,735. Rental started at \$40 per annum. It is currently \$1,200 per annum. The South Kauai or Kalaheo Very High Frequency Omnidirectional Range Tactical Air

Navigation (VORTEC) facility is a critical navigational aid for air traffic over Kauai and the State of Hawaii.

Due to payment delays to the State and FAA converting to a new computer processing software systems, and Congress's delay in passing the Department of Transportation's budget, by letter dated December 2, 2005, Ms. Darice B.N. Young, Realty Contracting Officer is requesting the Land Board grant a new 65-year lease, at no cost to FAA. (Exhibit B)

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The following agencies were solicited for comments:

County of Kauai, Planning Dept.:	No Objections
County of Kauai, Public Works Dept.:	No Comments
State Historic Preservation:	"no historic properties will be affected"
State DOT - Airports Division	No Objections
State Dept. of Health:	No Comments
Office of Hawaiian Affairs:	Not in agreement to no cost lease. (Letter attached as Exhibit C)

To determine past practices by the Department or the Land Board to charge 'fair market' rent to a Federal government agency, staff reviewed 36 lease documents issued. The following table shows those Federal agencies paying rent to the State:

GL 3852	US Dept of Navy	Military purposes	Paying \$156/annum sublease rent. Subleasing to a for-profit entity.
GL 3917	US National Aeronautics & Space Admin	Military purposes	Paying \$600/annum sublease rent. Subleasing to a for-profit entity
GL 3952	US Dept of Navy	Military purposes	Paying \$775/annum sublease rent. Subleasing to a for-profit entity.
GL 4437	US Postal Service	Post office purposes	Paying \$4,739/annum fair market rent.
GL 4599	US Postal Service	Post office purposes	Paying \$24,120/annum fair market rent.
GL 4915	US Postal Service	Post office purposes	Paying \$2,400/annum fair market rent.

GL 5105 (expire d)	US Army Corps of Engineers	Security chain link fence purposes	Paid \$882/annum fair market rent.
GL 5213	US Dept of Labor	Hawaii Job Corp	Paying \$7,400 or 20% of fair market rent.

Pursuant to Section 171-95(a)(2), HRS, the Board may, without public auction lease to the governments, agencies, and public utilities, public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine. Based on the important public service FAA provides the people of the State of Hawaii at this site, staff is recommending the annual rent be gratis.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the cancellation of a Revocable Permit No. S-2902.
3. Authorize the issuance of a direct lease to United States of America, Department of Transportation, Federal Aviation Administration, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current general lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

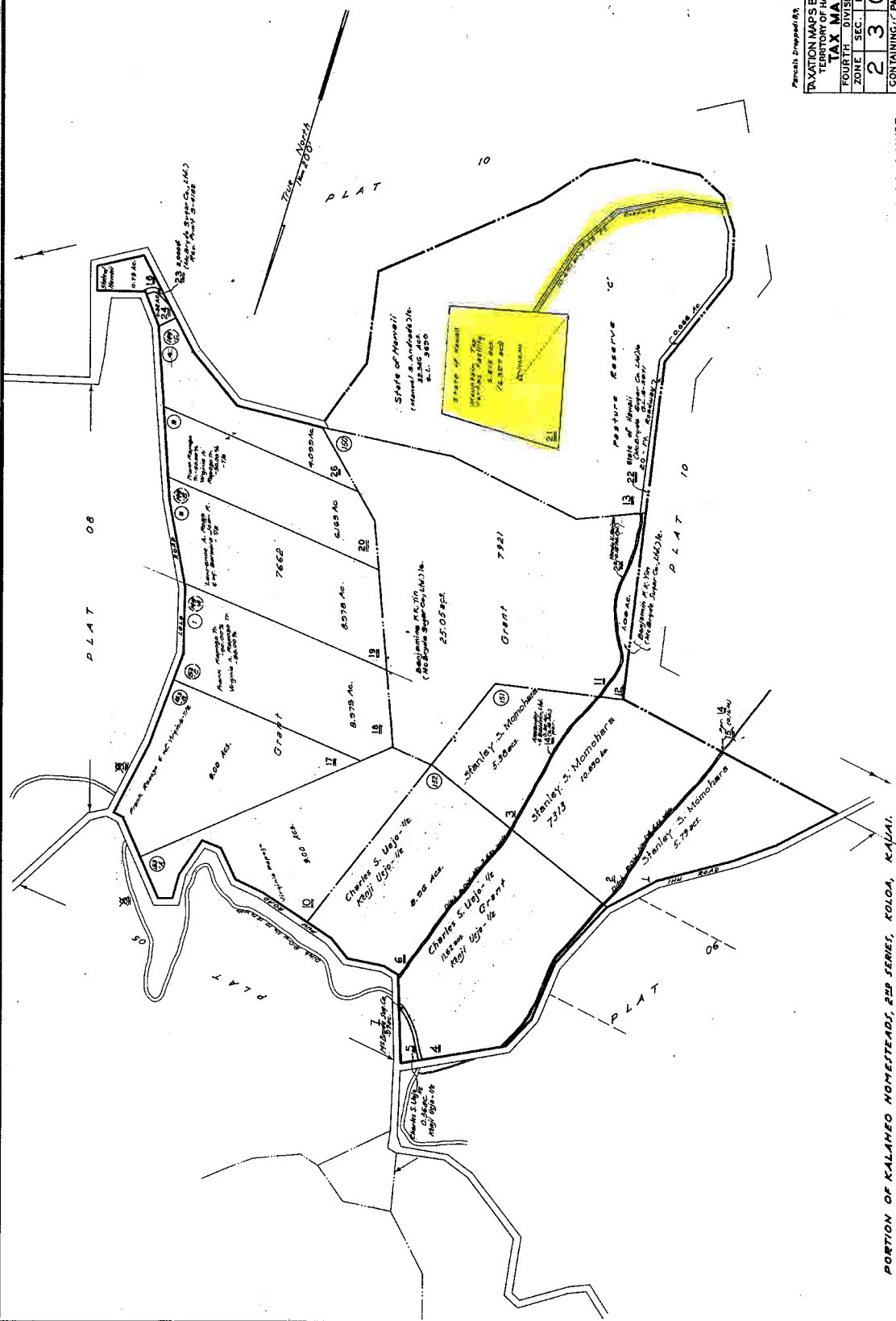
Respectfully Submitted,

Charlene E. Unoki

Joanne E. McComber
Land Agent

APPROVED FOR SUBMITTAL:

Peter T. Young
Peter T. Young, Chairperson



SUBJECT TO CHANGE

Summary

Parce's Dropped: 8,9,

TAXATION MAPS BUREAU

TERRITORY OF HAWAII
TAX MAP

IMM WAF
FOURTH DIVISION

ZONE	SEC.	PLAT
C	3	7

2	3	0	1
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CONTAINING 15 PARCELS
SCALE: 1 in. = 200 ft.

REVIEW

PORTION OF KALAHEO HOMESTEADS, 2ND SERIES, KOLOA, KAUAI.

Exhibit "A"

Dwg No.	2869
Source	Taxation Maps Bureau (Reg Map. 2551)
By	R.K. & A.L. Aug 1936

[illegible]

RP2907



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Real Estate and Utilities Section, AHNL-54B

P. O. Box 50109
Honolulu, Hawaii 96850-5000

December 2, 2005

Mr. Russell Tsuji
Administrator, Land Division
State of Hawaii
Department of Land and Natural
Resources
P. O. Box 621
Honolulu, HI 96809

Dear Mr. Tsuji:

By telephone yesterday, the Federal Aviation Administration (FAA) was advised by Mr. Tommy Oi, Kauai District Land Agent, that the monthly payments of \$100 for October and November 2005, have not been received for Revocable Permit No. S-2902, FAA "Mountain Top VORTAC Facility Site and 20-foot Roadway", (see enclosure (1), also referred to as FAA No. DTFA08-66-L-10181, or formerly FA-PC-181). This was the first notice of any delinquency of the monthly payments.

The South Kauai or Kalaheo Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) facility is a critical navigational aid for air traffic over Kauai and the State of Hawaii. Due to the critical importance of this facility we have been monitoring this payment situation since last year. To alleviate the problems we have with payments at the beginning of each fiscal year, I had discussed with Mr. Michael Laureta, the previous Kauai District Land Agent, the possibility of an amendment to the Revocable Permit so that an annual payment may be made instead of monthly payments.

After inquiring as to the status of the payments with the FAA Accounting Office in Los Angeles, I sent a letter yesterday to your office explaining the difficulties due to the complications with our payment systems and the rejection of all payment requests due to Congress' delay in passing the Department of Transportation's budget for fiscal year 2006. Until yesterday, we were operating under Continuing Resolution status.

Enclosed are copies of the invoices received from your Fiscal Office from August through November 2005, (see enclosure (2)). On each invoice the amount due is shown as a current amount and not past due.

This morning, I again contacted Mr. Oi and was advised to speak to Ms. Charlene Unoki of your office as he found that the Revocable Permit was terminated on November 12, 2005, as your records showed that payments were past due for more than 60 days.

After a discussion this morning with Ms. Unoki, we ask that the request stated in yesterday's letter be disregarded. Instead, we ask

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2005 DEC -5 P 3:01

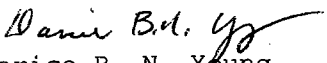
RECEIVED
LAND DIVISION

EXHIBIT "B"

that a "Direct Lease" be granted at no cost, for a 65 year term, for this essential public service facility. Enclosure (3) is the completed "Request for State Lands Application Form". If this request is acceptable, a FAA Land Lease document will be provided for your review and execution.

We appreciate your understanding and cooperation in this matter. Please contact me at (808) 541-1236, or by email at darice.b.young@faa.gov, if there are any questions or ways we may assist you.

Sincerely,


Darice B. N. Young
Realty Contracting Officer

cc:
Mr. Tommy Oi
Kauai District Land Agent
State of Hawaii
Department of Land and Natural Resources
3060 Elwa Street, Room 306
Lihue, HI 96766

EXHIBIT "B"

**STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES**

**REQUEST FOR STATE LANDS
APPLICATION FORM**

For DLNR use only:

Date of request: _____
Date request recvd: _____
Date request no. issued: _____
Request number: _____
Land Code: _____
Unit Code: _____
Status: Future
Type of Request: _____
Assigned Land Agent: _____

I. APPLICANT

Should a land disposition result from your application, the following information will be used in the preparation of the legal documents. Therefore, please include all applicable, full legal names and addresses, one for each person/entity (attach additional sheets as necessary). If title is held by a trust, please include the trustee(s) name(s) and full description of the trust (e.g., George D. Smith, Trustee of the George D. Smith Revocable Living Trust dated June 1, 2001).

Applicant name(s): Federal Aviation Administration (FAA)
Last name First Name

Mailing address: P. O. Box 50109
No. and Street
Honolulu, HI 96850-5000
City State Zip Code

Phone numbers: () () ()
Work Home Cellular
() ()
Pager Fax E-mail address

Signature: Darice B. N. Young Date: 12/2/05
Darice B. N. Young, FAA Realty Contracting Officer

Applicant intends to hold title as:

() Individual () Corporation () Partnership
() Husband and Wife () Limited Liability Corporation () Limited Partnership
() Trust () Non-Profit Corporation () Limited Liability Partnership
() Association () Joint Venture (x) Other (specify): Federal Government

For individual or husband and wife, type of tenancy:

() Tenant in Severalty () Tenants in Common () Joint Tenants () Tenants by the Entirety

For individual, marital status:

() Single () Widow/widower () Married – spouse of: _____

For partnership or corporation, state of incorporation: _____

II. AGENT

If you have an attorney, consultant or other person processing this request for you, please include the following information.

Agent name: Young, Darice
Last name First Name

Agent address: P. O. Box 50109
 No. and Street

Honolulu, HI 96850-5000
 City State Zip Code

Phone numbers: (808) 541-1236 () (808) 368-1093
 Work Home Cellular

(808) 299-6576 (808) 541-3462 darice.b.young@faa.gov
 Pager Fax E-mail address

III. TYPE OF REQUEST

- ☐ Right-of-entry (right to temporarily enter onto State lands for a specific purpose)
- ☐ Grant of easement (access, utility, seawall, etc.)
- ☐ Month-to-month revocable permit
- ☒ Direct lease (eleemosynary organizations, public utilities, government, etc.)
- ☐ Purchase of remnant
- ☐ Land patent in confirmation of a Land Commission Award
- ☐ Land license

Is this request being made to resolve an encroachment or other violation? ☒ Yes ☐ No

If yes, explain: This request is for a 65 year, no cost lease to replace Revocable Permit State No. S-2902 (FAA No. DTFA08-66-I-10181, formerly FA-PC-181) for the FAA Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC). This facility is critical for aircraft to navigate to and near the state of Hawaii and the island of Kauai (see attached cover letter and copy of Revocable Permit for further details).

IV. LOCATION AND AREA

If your request pertains to a specific parcel, please specify below.

Island: ☐ Oahu ☒ Kauai ☐ Molokai
☐ Hawaii ☐ Maui

Town: Kalaheo Tax Map Key: Div. 4:2-3-07

Area: 6.818 acres/sq.ft. (circle one)

County Zoning: Agricultural

State Land Use: ☒ Agricultural ☐ Rural
☐ Conservation ☐ Urban

Is property located in a Special Management Area?

☐ Yes ☒ No

V. USE

Identify the specific uses intended.

☐ Agriculture ☐ Easement - Access

- () Business/Commercial () Easement - Utility
() Industrial () Easement - Seawall
() Pasture
(x) Other (specify): Air traffic navigational aid.

A. Fully describe your proposed use of the public lands: The FAA established this VORTAC facility for air traffic navigation purposes on March 1, 1961. It is anticipated that this facility will be required for an indefinite term as aircraft, with the required equipment, detect the signal from this VORTAC to determine its location as it flies to the state of Hawaii and the island of Kauai.

B. Attach a location map showing a preliminary sketch or plot plan of your proposed project in relation to the tax maps. (see attached Revocable Permit S-2902)

C. Describe any improvements you intend to place on the land and their approximate value: The FAA constructed the VORTAC building, appurtenant structures and installed the initial equipment in 1961. The FAA plans to continue maintaining and upgrading this facility as needed. The acquisition cost established on January 26, 2000, for this facility was \$181,734.73.

D. If constructing improvements, attach a Plan of Development showing improvements to be constructed and their location on the public lands including a timeframe for construction. (No planned improvements at this time.)

E. Is it your opinion that an environmental assessment is required? () Yes (x) No

If no, identify exemption: This facility was grandfathered under the laws and regulations established in 1961. The FAA is fully responsible for any environmental issues that may arise.

If yes, describe completion of EA: _____

F. Describe what other permits or approvals are required for this use and whether you have obtained such permits or approvals: No other permits or approvals are required.

VI. OTHER

A. If you are applying for a revocable permit for any type of use, you are required to provide the following information:

- 1) Describe your qualifications and experience in running this type of operation; and

2) Describe your long-term intentions for this operation. (Note: Revocable permits are temporary and may be revoked at any time.)

B. If you are applying for a revocable permit for pasture or agricultural use, you are required to complete Attachment A.

VII. CERTIFICATION

I/We hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected or my/our lease/permit/agreement may be cancelled.

Darice B. N. Young, Realty Contracting Officer
Printed Name

X *Darice B.N. Young*
Signature

Printed Name

X _____
Signature

For DLNR Use Only:

TO CLOSE FUTURE TENANT:

Reason for closing: _____

Approved by DLA: _____

Date request closed: _____

EXHIBIT "B"



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD06/2632

August 24, 2006

Thomas H. Oi, District Land Agent
Department of Land and Natural Resources, Land Division
3060 Eiwa Street, Room 306
Līhu'e, Hawai'i 96766

RE: Request for General Lease to the Federal Aviation Administration (FAA) for Air Navigation Aid Facility and 20-Foot Wide Roadway for Access Purposes, Kalāheo, Kōloa, Kaua'i, TMK 2-3-07:21 (Ref. No. 06KD-038)

Dear Mr. Oi,

The Office of Hawaiian Affairs (OHA) is in receipt of your August 2, 2006 request for comments regarding the above referenced lease request. We apologize for the late response, but offer the following comments. From the information your office has provided, as of December 2005, the FAA was willing to continue its monthly rental rate of \$100, it simply requested that a lump sum rental fee be charged annually, rather than monthly. It now appears that the FAA is requesting a no cost lease.

As you know, because these lands became a part of the public land trust under section 5(b) of the Admissions Act, OHA is entitled to 20% of all revenue generated by any lease of this land. We realize that the FAA's facility on this parcel is critical for aircraft flying to and from Kaua'i, however, we feel that this purpose does not justify foregoing a lease payment. The FAA, rather than the beneficiaries of the public land trust, should bear the cost, and the Department of Land and Natural Resources, as trustee, should ensure that the fair market value is received from the lessee. In lieu of the fair market value, OHA feels that a continuation of the \$100 monthly payment, or a \$1,200 annual lump sum, would be reasonable and acceptable.

Thank you for the opportunity to comment. If you have any further questions or concerns please contact Koa Kaulukukui at (808) 594-0244 or e-mail her at koalanik@oha.org. AUG 11 09:53

Sincerely,

A handwritten signature in cursive script, appearing to read "Clyde W. Nāmu'o".

Clyde W. Nāmu'o
Administrator

AUG 30 '06

DLNR KDLO RCVD

"EXHIBIT C"